

AN ACT

RELATING TO PUBLIC EMPLOYEES RETIREMENT; PROVIDING ADDITIONAL CONDITIONS FOR THE RETURN TO EMPLOYMENT BY RETIRED MEMBERS; IMPLEMENTING THE HIGHEST THREE-YEAR AVERAGE METHOD FOR CALCULATING THE PENSION PAYABLE PURSUANT TO STATE LEGISLATOR COVERAGE PLAN 2.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 10-11-8 NMSA 1978 (being Laws 1987, Chapter 253, Section 8, as amended by Laws 2004, Chapter 2, Section 1 and by Laws 2004, Chapter 68, Section 4) is amended to read:

"10-11-8. NORMAL RETIREMENT--RETURN TO EMPLOYMENT-- BENEFITS CONTINUED FOR CERTAIN RETIRED MEMBERS--EMPLOYER CONTRIBUTIONS.--

A. A member may retire upon fulfilling the following requirements prior to the selected date of retirement:

(1) a written application for normal retirement, in the form prescribed by the association, is filed with the association;

(2) employment is terminated with all employers covered by any state system or the educational retirement system;

(3) the member selects an effective date of

retirement that is the first day of a calendar month; and

(4) the member meets the age and service credit requirement for normal retirement specified in the coverage plan applicable to the member.

B. The amount of normal retirement pension is determined in accordance with the coverage plan applicable to the member.

C. Except as provided in Subsection D, E or F of this section, a retired member may be subsequently employed by an affiliated public employer if the following conditions apply:

(1) the member has not been employed as an employee of an affiliated public employer for at least ninety consecutive days from the date of retirement to the commencement of employment or re-employment with an affiliated public employer. If the retired member returns to employment without first completing ninety consecutive days of retirement:

(a) the retired member's pension shall be suspended immediately and the previously retired member shall become a member; and

(b) upon termination of the subsequent employment, the previously retired member's pension shall be calculated pursuant to Paragraph (2) of Subsection G of this section;

(2) the retired member returns to employment prior to July 1, 2005;

(3) effective the first day of the month following the month in which the retired member's earnings total twenty-five thousand dollars (\$25,000) during a calendar year, a retired member who returns to employment shall be required to make contributions to the fund as specified in the Public Employees Retirement Act; provided, however, that after December 31, 2006, no additional contributions shall be required pursuant to this paragraph;

(4) until the subsequent employment is terminated, the affiliated public employer that employs the retired member shall make contributions to the fund in the amount specified in the Public Employees Retirement Act or in a higher amount adjusted for full actuarial cost as determined annually by the association; and

(5) a retired member who returns to employment during retirement pursuant to this subsection is entitled to receive retirement benefits but is not entitled to acquire service credit or to acquire or purchase service credit in the future for the period of the retired member's re-employment with an affiliated public employer.

D. The provisions of Paragraphs (3) and (4) of Subsection C of this section that require employee or employer contributions and the provisions of Subsections F and G of

this section do not apply to:

(1) a retired member who is appointed chief of police of an affiliated public employer, other than the affiliated public employer from which the retired member retired, or who is appointed undersheriff; provided that:

(a) the retired member files an irrevocable exemption from membership with the association within thirty days of appointment;

(b) each sheriff's office shall be limited to one undersheriff qualifying pursuant to this paragraph;

(c) the irrevocable exemption shall be for the chief of police's or the undersheriff's term of office; and

(d) filing an irrevocable exemption shall irrevocably bar the retired member from acquiring service credit for the period of exemption from membership; or

(2) a retired member employed by the legislature for legislative session work.

E. At any time during a retired member's subsequent employment pursuant to Subsection C of this section, the retired member may elect to suspend the pension.

F. On or after July 1, 2005, a retired member may be subsequently employed by an affiliated public employer provided that the retired member's pension shall be suspended

the first day of the month in which the retired member's earnings for a calendar year exceed thirty thousand dollars (\$30,000).

G. When a pension is suspended pursuant to Subparagraph (a) of Paragraph (1) of Subsection C of this section, Subsection E of this section or Subsection F of this section, the following conditions apply:

(1) the retired member who is subsequently employed by an affiliated public employer shall become a member. The previously retired member and the subsequent affiliated public employer shall make the required employee and employer contributions, and the previously retired member shall accrue service credit for the period of subsequent employment; and

(2) when a previously retired member terminates the subsequent employment with an affiliated public employer, the previously retired member shall retire according to the provisions of the Public Employees Retirement Act, subject to the following conditions:

(a) payment of the pension shall resume in accordance with the provisions of Subsection A of this section;

(b) unless the previously retired member accrued at least three years of service credit on account of the subsequent employment, the recalculation of

pension shall: 1) employ the form of payment selected by the previously retired member at the time of the first retirement; and 2) use the provisions of the coverage plan applicable to the member on the date of the first retirement; and

(c) the recalculated pension shall not be less than the amount of the suspended pension.

H. The pension of a member who has three or more years of service credit under each of two or more coverage plans shall be determined in accordance with the coverage plan that produces the highest pension. The pension of a member who has service credit under two or more coverage plans but who has three or more years of service credit under only one of those coverage plans shall be determined in accordance with the coverage plan in which the member has three or more years of service credit. If the service credit is acquired under two different coverage plans applied to the same affiliated public employer as a consequence of an election by the members, adoption by the affiliated public employer or a change in the law that results in the application of a coverage plan with a greater pension, the greater pension shall be paid a member retiring from the affiliated public employer under which the change in coverage plan took place regardless of the amount of service credit under the coverage plan producing the greater pension; provided the member has three or more years of continuous employment with that

affiliated public employer immediately preceding or immediately preceding and immediately following the date the coverage plan changed. The provisions of each coverage plan for the purpose of this subsection shall be those in effect at the time the member ceased to be covered by the coverage plan. "Service credit", for the purposes of this subsection, shall be only personal service rendered an affiliated public employer and credited to the member under the provisions of Subsection A of Section 10-11-4 NMSA 1978. Service credited under any other provision of the Public Employees Retirement Act shall not be used to satisfy the three-year service credit requirement of this subsection."

Section 2. Section 10-11-43.3 NMSA 1978 (being Laws 2003, Chapter 85, Section 9) is amended to read:

"10-11-43.3. STATE LEGISLATOR MEMBER COVERAGE PLAN 2--AMOUNT OF PENSION--FORM OF PAYMENT A.--Under state legislator member coverage plan 2, the annual amount of pension under form of payment A is equal in any calendar year to eleven percent of the average of the three highest per diem rates in effect, pursuant to Section 2-1-8 NMSA 1978, as determined on July 1 of each year of service of the legislator or lieutenant governor, multiplied by sixty and further multiplied by credited service as a legislator or lieutenant governor. A pension paid under state legislator member coverage plan 2 shall be adjusted pursuant to Section 10-11-118 NMSA 1978 for

a legislator or lieutenant governor who has been retired for at least two full calendar years from the effective date of the latest retirement prior to July 1 of the year in which the pension is being adjusted."

Section 3. TEMPORARY PROVISION--APPLICABILITY.--The adjustment in the pension for state legislator member coverage plan 2 provided in Section 2 of this act is applicable to state legislator members who retire on or after July 1, 2005.